IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

MFA.No. 815 of 2001

OPMV.625/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA
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APPELLANT/APPLICANT:

R.SUNIL KUMAR, S/O. RAMAKRISHNAN,
AGED 34, MANKUZHI PUTHEN VEEDU,
ADAKAKUZHI P.O., METHUMMAL,
NEYYATTINKARA.

BY ADV. SRI. S. V PREMAKUMARAN NAIR
SRI. R.T.PRADEEP

RESPONDENTS/RESPONDENTS:
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1. **NANOO NADAR, S/O. PAPPU NADAR,**
RATNA VILASOM, THIRUMANGALAM,
NEYYATTINKARA.

2. **SREEKUMAR ALIAS MANIKANDAN,**
MAVILAMKUZHYMELA PUTHENVEEDU,
KULATHUMMAL, PARAKOTTUKONAM,
CHAROTTUKONAM P.O, NEYYATTINKARA.

3. **THE DIVISIONAL MANAGER,**
UNITED INDIA INSURANCE CO. LTD.,
THIRUVANANTHAPURAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.815 OF 2001

Dated 22nd August, 2007

JUDGMENT

Koshy,J.

Appellant/claimant, at the age of 29, sustained very serious injuries in a motor accident on 18.3.1995. He was driving a van with a marriage party. While the van was being parked, a lorry came from behind and hit the same and the accident occurred. The Tribunal found that the accident occurred due to the negligence of the driver of the lorry and the above lorry was insured by the third respondent insurance company. However, against a claim of Rs.4,00,000/=, only a total compensation of Rs.1,01,100/= was awarded. Only quantum of compensation is disputed in this appeal.

2. Appellant was aged 29 at the time of the accident. Tribunal has taken 18 as the multiplier taking guidance from the second schedule. Even though it was argued that considering the present life span, a higher multiplier should be taken, taking into account the three member bench decision of the Supreme Court in ***Smt.Supe Dei and others*** v. ***M/s.National Insurance Company Ltd. and another*** (JT 2002 (Suppl.1) SC 451) we are not enhancing the multiplier. As

far as the injuries are concerned, he sustained very serious injuries on his head as well as hand. He was treated in the Medical College Hospital for 66 days and thereafter also treated as an inpatient in a private hospital for two months. According to the appellant, due to the fracture caused to his skull he is unable to drive vehicles. Ext.A107 is the referral O.P. Card issued from the Medical College Hospital. In Ext.A107, it is noted that he had brain strain and injury to right pinna. In Ext.A107, it is noted that the applicant had head injury. Ext.A108 is C.T.Scan report. Ext.A109 is disability certificate issued by Dr.Sivaprasad, Associate Professor, Department of Surgery, Medical College Hospital. As per Ext.A109, the applicant was admitted in that hospital on 18.3.95 and discharged on 23.5.95. In Ext.A109, it is noted that the applicant had (1) diffused brain injury with subarachnoid bleeding (2) right sided hemiplegia (3) fracture of zygomatic arch of maxilla on right side (4) fracture of lateral wall of the bone of right orbit (5) unconsciousness and decerchrate rigidity (6) multiple abrasions on right side of face and (7) contusions on right side of face. His contention that in view of the right sided hemiplegia he is unable to drive vehicles as a

professional driver may be correct. Doctor assessed his permanent disability by Ext.A109 certificate at 24%. Since the doctor was not examined, Tribunal awarded compensation only for 20% disability. On the facts of the case and considering the nature of injuries, we are not changing the disability assessed by the Tribunal. Tribunal has taken Rs.1,500/= as the monthly income. According to the appellant, he was getting Rs.3,000/= per month. Admittedly, he was a professional driver and he had licence to drive commercial vehicles. Even if Rs.150/= is taken as daily income, he will get more than Rs.3,000/= per month and, therefore, Tribunal ought to have taken at least Rs.3,000/= as the monthly income. After taking 18 as the multiplier Tribunal has fixed compensation for disability and loss of earning power as Rs.64,800/=. Since we have doubled the income, he will be entitled to an additional amount of Rs.64,800/= for disability and loss of earning power. Considering the long treatment Tribunal found that he was unable to do anything during the treatment period of six months and granted Rs.9,000/= for actual loss of earnings for six months. Since we have doubled the income, the appellant is entitled to an additional amount of Rs.9,000/= under that head. It is submitted that he has

produced the actual medical bills for more than Rs.25,000/=. Tribunal has awarded only Rs.15,000/= for treatment expenses. He was treated as an inpatient in the Medical College Hospital for more than two months and in Marthandom Biswas Hospital for another two months. Every expenses for treatment will not be covered by bills. Considering the medical bills produced, and also considering the nature of injuries and future treatment required, we award Rs.10,000/= more for treatment expenses. Even though very serious injuries were caused and he has to travel to the hospitals for several times for outpatient treatment also, no amount was awarded for transportation expenses. We award Rs.2,000/= under that head. For pain and sufferings only Rs.7,500/= was awarded even though very serious injuries were caused and undergone long treatment. We award an additional amount of Rs.2,500/= under that head. Even though it is argued that compensation awarded under other heads are also very low, considering the total compensation awarded, we are not enhancing the same. Thus, the appellant is entitled to an additional compensation of Rs.88,300/=. The above amount of Rs.88,300/=, over and above the decreed amount by the Tribunal, with 7.5% interest from the date of application till its deposit

should be deposited by the third respondent insurance company. Since the accident happened in 1995, on deposit of the amount, the appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

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